

BERKLEY TRACE, LLC, and )  
THE HAMPTON COMPANY, INC., )  
 )  
Plaintiffs, )  
v. )  
 )  
FOOD LION, LLC, CAMELLIA )  
FOOD STORES, INC., and EASTERN )  
SHORE MARKETS, INC., )  
 )  
Defendants. )

IN THE CIRCUIT COURT  
FOR WORCESTER COUNTY  
STATE OF MARYLAND

CASE NO. 23-C-10-001871

**DEFENDANT FOOD LION, LLC'S MOTION TO COMPEL  
DISCOVERY FROM PLAINTIFFS AND FOR SANCTIONS**

Defendant Food Lion, LLC ("Food Lion"), pursuant to Rules 2-432 and 2-433 of the Maryland Rules of Civil Procedure, hereby moves for an order compelling Plaintiffs Berkley Trace, LLC and The Hampton Company, Inc. to answer Food Lion's Interrogatories and to produce documents responsive to Food Lion's Requests for Production of Documents. Food Lion further requests that, as a sanction for not providing discovery, the Court order Plaintiffs to pay Food Lion an amount equal to the attorneys' fees and costs incurred in filing and resolving this Motion.

In support of this Motion, Food Lion asserts the following:

1. On May 25, 2011, Food Lion served Plaintiffs' counsel with (a) Food Lion, LLC's Interrogatories to Berkley Trace, LLC, (b) Food Lion, LLC's Interrogatories to The Hampton Company, Inc., (c) Food Lion, LLC's Request for Production of Documents to Berkley Trace, LLC, and (d) Food Lion, LLC's Request for Production of Documents to The Hampton Company, Inc.

2. Plaintiffs' responses to Food Lion's discovery requests were due no later than June 27, 2011.

3. Plaintiffs did not respond to Food Lion's discovery requests or request an extension of time to do so.

4. On July 13, Food Lion's counsel attempted to contact Plaintiffs' counsel by telephone, and was told he was on another call. Food Lion's counsel left a voice mail message asking Plaintiffs' counsel to call to discuss Plaintiffs' failure to provide discovery responses, which were then two weeks overdue. Plaintiffs' counsel did not respond to the message.

5. On July 18, Food Lion's counsel electronically delivered to Plaintiffs' counsel a letter that requested the immediate production of Plaintiffs' discovery responses, which at that time were three weeks overdue. Plaintiffs' counsel did not respond to the letter. *See* Attachment 1.

6. On July 25, Food Lion's counsel electronically delivered to Plaintiffs' counsel another letter, which notified Plaintiffs that Food Lion would file a motion to compel if their discovery responses were not delivered by July 29. *See* Attachment 2. Plaintiffs' counsel responded by telephone approximately two hours later, and stated that Plaintiffs would endeavor to provide their discovery responses by July 29.

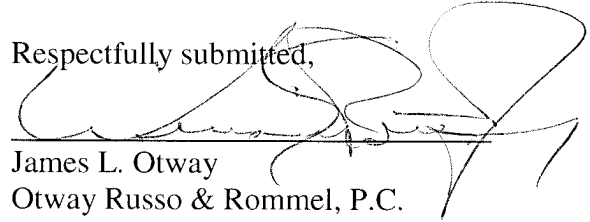
7. Plaintiffs have still not produced any responses to Food Lion's discovery requests, or offered any explanation as to why they have not been produced.

8. Food Lion requires Plaintiffs' discovery responses to investigate their claims, to prepare for depositions, and to prepare for trial.

Accordingly, Food Lion asks the Court to issue an order compelling Plaintiffs to answer Food Lion's outstanding interrogatories, and to produce the documents responsive to Food Lion's outstanding document requests, without further delay. Food Lion further requests that it be awarded all costs and attorneys fees incurred in bringing and resolving this motion.

August 5, 2011

Respectfully submitted,



James L. Otway  
Otway Russo & Rommel, P.C.  
PO 4096  
Salisbury, MD 21803-4096  
Tel. No. 410-749-3900  
Fax No. 410-749-8577

Joseph P. Esposito (admitted *pro hac vice*)  
William E. Potts, Jr. (admitted *pro hac vice*)  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, N.W.  
Washington, DC 20037  
Tel. No. 202-955-1500  
Fax No. 202-778-7472

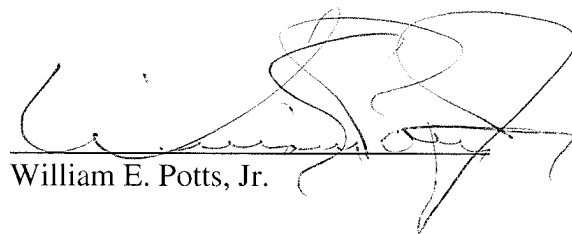
Counsel for Defendant Food Lion, LLC

## **CERTIFICATE OF SERVICE**

I CERTIFY that on this 5<sup>th</sup> day of August, 2011, a copy of the foregoing Motion to Compel Discovery from Plaintiffs and for Sanctions was served on the following by first class mail, postage prepaid:

Bruce F. Bright  
Ayres, Jenkins, Gordy & Almand, P.A.  
6200 Coastal Highway  
Suite 200  
Ocean City, Maryland 21842

Sanford A. Friedman  
Law Office of Sanford Friedman, LLC  
1050 17<sup>th</sup> Street, N.W.  
Suite 400  
Washington, DC 20036

  
William E. Potts, Jr.

ATTACHMENT 1



HUNTON & WILLIAMS LLP  
2200 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20037

TEL 202 • 955 • 1500  
FAX 202 • 778 • 2201

WILLIAM E. POTTS, JR.  
DIRECT DIAL: 202 • 419 • 2118  
EMAIL: wpotts@hunton.com

July 18, 2011

FILE NO: 46722.000123

Bruce F. Bright  
Ayres, Jenkins, Gordy & Almand, P.A.  
6200 Coastal Highway, Suite 200  
Ocean City, Maryland 21842

Re: *Berkley Trace, LLC, et al. v. Food Lion, LLC, et al.*, No. 23-C-10-001871 (Worcester County Circuit Court)

Dear Bruce:

As explained in the voice message I left for you last week, there are two outstanding matters that require attention.

First, the parties have not yet executed and filed a Stipulated Protective Order to protect confidential information that is produced in discovery. We distributed Food Lion's proposed draft on May 27, which the Camellia defendants have now approved. If the draft is acceptable to you, please execute a copy and forward it to me and Jim Otway, and we will arrange to have it filed. If you have any suggested revisions, please provide them to us by tomorrow.

Second, your clients' responses to Food Lion's interrogatories and document requests were due three weeks ago, and you did not request any extension of time for serving the responses. Please provide the responses without further delay.

My firm's District of Columbia office moved to a new location last week. Please use the following address for all future deliveries to me and Joe Esposito:

Hunton & Williams LLP  
2200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037



Bruce F. Bright  
Ayres, Jenkins, Gordy & Almand, P.A.  
July 18, 2011  
Page 2

Thank you in advance for your prompt attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "William E. Potts, Jr.", with a large, stylized flourish extending from the end of the signature.

William E. Potts, Jr.

cc: Sanford A. Friedman  
James L. Otway  
Joseph P. Esposito



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WILLIAM E. POTTS, JR.  
DIRECT DIAL: 202 • 419 • 2118  
EMAIL: wpotts@hunton.com

July 25, 2011

FILE NO: 46722.000123

Bruce F. Bright  
Ayres, Jenkins, Gordy & Almand, P.A.  
6200 Coastal Highway, Suite 200  
Ocean City, Maryland 21842

Re: *Berkley Trace, LLC, et al. v. Food Lion, LLC, et al.*, No. 23-C-10-001871 (Worcester County Circuit Court)

Dear Bruce:

Plaintiffs have not responded to Food Lion's May 25, 2008 discovery requests, and you have not responded to the voice message I left you on July 13, or the letter I sent you on July 18, regarding the requests. If we do not receive Plaintiffs' discovery responses by noon on Friday, July 29, we intend to file a motion to compel.

Sincerely,

A handwritten signature in black ink, appearing to read "William E. Potts, Jr.", written over a horizontal line.

William E. Potts, Jr.

cc: Sanford A. Friedman  
James L. Otway  
Joseph P. Esposito

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IN THE CIRCUIT COURT  
 FOR WORCESTER COUNTY  
 STATE OF MARYLAND

CASE NO. 23-C-10-001871

### ORDER

This matter came before the Court on Defendant Food Lion, LLC's Motion to Compel Discovery from Plaintiffs and for Sanctions. Upon consideration of Food Lion's Motion and Plaintiffs' response, it is hereby

ORDERED that Plaintiffs Berkley Trace LLC and The Hampton Company, Inc. shall answer Food Lion's interrogatories, and produce the documents requested by Food Lion's document requests, within five (5) days; and it is further

ORDERED that Plaintiffs shall pay to Food Lion an amount equal to the attorneys' fees and costs Food Lion incurred in bringing and resolving its Motion.

Food Lion shall tender to Plaintiffs' counsel and to the Court a statement of the attorneys' fees and costs incurred in bringing and resolving its motion.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Judge of the Circuit Court for  
 Worcester County



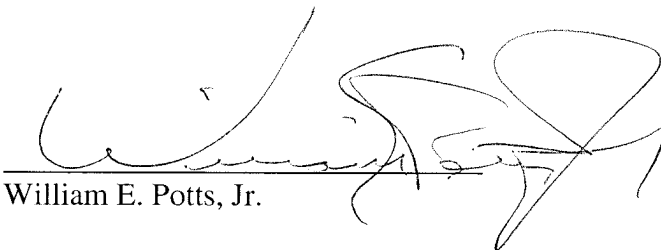
Counsel for Defendant Food Lion, LLC

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